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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/542,571	07/19/2005	Hiromu Ueshima	100341-00062	7038

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EXAMINER	
NGUYEN, DAT	

ART UNIT	PAPER NUMBER
3714	

NOTIFICATION DATE	DELIVERY MODE
05/14/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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IPMatters@arentfox.com
Patent_Mail@arentfox.com

Office Action Summary	Application No.	Applicant(s)	
	10/542,571	UESHIMA ET AL.	
	Examiner	Art Unit	
	DAT T. NGUYEN	3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *07 December 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-19* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

This office action is responsive to amendments filed 12/07/2007 in which applicant amends claims 1-3, 6-10 and 12-16, adds new claims 18 and 19 and responds to claim rejections. Claims 1-19 are pending.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. For the sake of brevity, only claim one will be discussed, however it should be noted that other rejected claims are rejected on the same grounds for having the same issues or being dependent form a claim with the same issues. Claim 1 recites a photographic device that includes an image sensor, a data array former, and a photographic pixel data array former; and the photographic pixel data array former further comprising an extractor and a producer. However no such structure/relationship of structures has been disclosed in the specification. At best some of the elements have been disclosed such as the image sensor and data array former (disclosed as the data array forming means). However there is no disclosure

that such features are to be comprised in a photographic device. Furthermore, there is no mention of an extractor or a producer in the instant specification let alone a photographic pixel data array former including an "extractor" or a "producer".

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 16-19 are rejected as being directed towards non-statutory subject matter. The method comprises the sampling and creation of data, however there is no tangible result. In short, the claims should at the very least present some tangible result to the user, such as the display of the identified matching.

In this case, tangible is defined as:

the process claim must set forth a practical application of that judicial exception to produce a real-world result.

Benson, 409 U.S. at 71-72, 175 USPQ at 676-77 (invention ineligible because had "no substantial practical application."). "[A]n application of a law of nature or mathematical formula to a ... process may well be deserving of patent protection." Diehr, 450 U.S. at 187, 209 USPQ at 8 (emphasis added); see also Corning, 56 U.S. (15 How.) at 268, 14 L.Ed. 683 ("It is for the discovery or invention of some practical method or means of producing a beneficial result or effect, that a patent is granted . . ."). In other words, the opposite meaning of "tangible" is "abstract." (MPEP 2106 (B)).

Applicant's currently claimed method has no real world result in that there is no information acquired from the method at the very least needs to be tangible to a user.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 5-10 and 13-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Kaji et al. (US 2003/0171142).

The rejection as stated in the previous office action dated 08/08/2007 is maintained and incorporated herein.

Regarding the amended limitations, wherein the photographic device includes an image sensor (feature 56). A data array former ([0187]-[0192], discloses the formation of data for calculation of points on the image sensed card for computation, and therefore inherently includes a data array former).

Regarding further limitations of the photographic pixel data array former and the associated producer and extractor, as noted above, there is no support for such limitations in the specification and the examiner is unable to determine what applicant is intending to claim. However, in the spirit of furthering prosecution, the examiner will

interpret the limitations and features to be akin to features taught by that of Kaji. Kaji extracts the pixel data and filters irrelevant pixels and produces a coherent data array thereinafter ([0184-0185]).

Claim 12 is rejected under 35 U.S.C. 102(e) as being anticipated by Ishihara et al. (US 20020028710).

The rejection as stated in the previous office action dated 08/08/2007 is maintained and incorporated herein.

Claims 16, 17 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Shimura et al. (US 5,644,765).

The rejection as stated in the previous office action dated 08/08/2007 is maintained and incorporated herein.

Regarding claim 19, the photographed image is compared to images on the data base based on distances between corresponding pixels. The shortest distances between pixels indicate the closest match between the images taken and images on file and so the match on file that has the shortest distances between corresponding pixel arrays is considered the match (figure 2, feature 52 and the detailed description thereof).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kaji et al. as applied to claim 1 above and further in view of Ishihara et al. (US 2002/0028710).

The rejection as stated in the previous office action dated 08/08/2007 is maintained and incorporated herein.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kaji et al. as applied to claim 3 above and further in view of Shibuya (US 7,006,693).

The rejection as stated in the previous office action dated 08/08/2007 is maintained and incorporated herein.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shimura et al.

Shimura further teaches multiple samplings of the image to compare with the database of images (figures 4 and 5 and the detailed description thereof). However Shimura fails to teach the limitation of the second resolution being lower than the first resolution. However it is known at the time of invention to sample the second samples at a lower resolution in order to speed up the time since the first sample was already taken at a higher resolution since doing so would cut down on computation time. Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to sample the second image at a lower resolution than the first in order to speed up processing time.

Response to Arguments

Applicant's arguments filed 12/07/2007 have been fully considered but they are not persuasive.

Applicant alleges that the prior art does not teach a printed card with visually human identifiable design. The examiner respectfully disagrees. One side of the card of Kaji contains printed photograph and description while the other side contains data. The photograph device photographs the back of the card. Furthermore the language of "for photographing said design..." does not lend patentable weight to the invention since the claim draws towards an apparatus claim wherein such language is interpreted as intended use language. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations.

Applicant's other arguments draw towards the lacking of the prior art in disclosing a data array former, an extractor and a producer. However, as stated above, no such structural limitations have been disclosed in the applicant's specification. In fact a thorough read as well as search of the specification for the terms former, extractor or producer yielded no results. There is therefore no support for such claimed limitations and further no such limitations in the arrangement as claimed, that of the photographic device comprising formers, and formers comprising extractors and producers. If applicant disagrees, examiner respectfully invites applicant to indicate in the next response where in the specification each of the features can be found as well as disclosure for their relationship with respect to the photographic device.

Regarding the amended limitations, please see the rejection above.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAT T. NGUYEN whose telephone number is (571)272-2178. The examiner can normally be reached on M-F 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571)272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John M Hotaling II/
Primary Examiner, Art Unit 3714

Dat Nguyen

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	10/542,571	UESHIMA ET AL.	
	Examiner	Art Unit	
	DAT T. NGUYEN	3714	